

MAR - 4 2005

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LOUIS BALESTRACCI, JEAN *
BONVILLE, ANDREW CARR, ROBERT *
COMEAU, LEO CONELLY, JR., JOHN *
CORCORAN, JR., THOMAS DEARN, *
RICHARD ELDREDGE, RICHARD *
FLETCHER, BRIAN HAWKESWORTH, *
BEAUFORD HUNT, ROBERT LAWRENCE, *
JOSEPH LOPES, DAVID MANN, GARY *
MEYN, RUSSELL NICKERSON, DIANE *
OWENS, ERNEST QUINTIN, DONNA *
RENE, JOSEPH SOCHA, STEPHEN *
WATTS, and DUNSTAN WHITLOCK, *

Plaintiffs, *

v. *

NSTAR ELECTRIC & GAS CORPORATION, *

Defendant *

Civil Action No. 04-11103-EFH

**STATEMENT OF UNDISPUTED, MATERIAL
FACTS SUBMITTED BY NSTAR ELECTRIC AND
GAS CORPORATION PURSUANT TO LOCAL RULE 56.1**

Pursuant to Local Rule 56.1, Defendant NSTAR Electric and Gas Corporation ("NSTAR") submits its Statement of Undisputed, Material Facts in Support of its Renewed Motion to Dismiss, and Motion for Summary Judgment:

A. Parties

1. NSTAR is an energy delivery company serving approximately 1.3 million customers in 80 Massachusetts cities and towns from Worcester to Provincetown.¹ Following the 1999 merger of BEC Energy, the parent company of Boston Edison Company ("Boston Edison"), with

¹All facts set forth herein are assumed to be true *for purposes of this motion only*.

January 1, 1993 but currently have not met the "Rule of 75" will be entitled to continuation of coverage for eighteen (18) months through COBRA. The Company will pay the cost of the first twelve (12) months premium. Employees will be responsible for the cost of the remaining six (6) months premium.

3) Employees who were at least age forty (40) and had completed at least twelve (12) full years of System service as of January 1, 1993 and currently meet the "Rule of 75" will be entitled to medical and dental insurance coverage provided they pay ten percent (10%) of the current medical and dental premium until age sixty-two (62). At age 62, the Company will pay 100% of the premium.

(Exh. 62 to NSTAR Appendix).

21. The 1997 PRP Document further provided:

Plan Documents...The Last Word:

This summary is not intended to offer detailed descriptions of the System's employee benefit plans. All information furnished is governed by the provisions of the actual plan documents pertaining to the appropriate benefit plans. If any conflict arises between this summary and the System's employee benefit plan documents, or if any point is not covered, the terms of the appropriate plan documents will govern in all cases.

(Exh. A to Complaint, Exh. 62 to NSTAR Appendix).

E. 1999 Voluntary Separation Program

22. In 1999, Commonwealth Energy and Boston Edison offered eligible employees a Voluntary Separation Program ("VSP"). The Program Summary for the VSP provided in part that "[i]f any conflict arises between this summary and either the Company's employee benefit plan documents, the Agreement and General Release, or if any part is not covered, then the terms of the appropriate plan documents or Agreement and General Release, as appropriate, will govern in all cases." (COM/Energy, Boston Edison, 1999 Voluntary Separation Program, Program Summary,

Exh. 63 to NSTAR Appendix).

23. The Program Summary for the VSP contained the following provision on medical / dental benefits:

Medical/Dental: For those employees who are eligible for post-retirement medical/dental benefits.

Coverage will continue to employee and eligible dependents. Certain employees might be responsible for co-payment of premiums.

(Exh. 63 to NSTAR Appendix).

24. At the foot of the page on which appears the language quoted in par. 23, italicized language provided:

The Company reserves the right to change or terminate coverage for current and former employees at any time. Any such change may be in the benefits provided, the contributions required, or in any other aspect in accordance with applicable laws.

(Exh. 64 to NSTAR Appendix) (emphasis in original).

25. Each of the seven (7) Plaintiffs who retired in 1997 received a document entitled, "Commonwealth Energy System and Subsidiary Companies, Information Relative to Employee Benefits Upon Your Retirement Date." (Exhs. 40-46 to NSTAR Appendix). This document provided in part:

HEALTH INSURANCE

* * * * *

B. Dental Insurance

You will be covered by the Company sponsored dental plan on your Actual Retirement Date.

Coverage for your spouse and/or any eligible dependent(s) will be provided.

1999 Voluntary Separation Program

COM/Energy Boston Edison

1999 Voluntary Separation Program

Program Summary

1999 Voluntary Separation Program

TABLE OF CONTENTS

Introduction.....	1
Eligibility	2
Election Deadline.....	2
1999 Voluntary Program Benefits.....	3
Your Next Steps.....	7
Appendix A-1 Eligible COM/Energy Employees.....	8
Appendix A-2 Eligible Boston Edison Employees.....	9
Appendix B Other Benefits Information.....	10
Appendix C Plan Administration and ERISA Rights...	12

Note: Other Appendices Included in Your Information Kit

Appendix D-1 Older Workers Benefit Protection Act of 1990 COM/Energy
Appendix D-2 Older Workers Benefit Protection Act of 1990 Boston Edison

1999 Voluntary Separation Program

OTHER BENEFITS INFORMATION - CONTINUED

> Medical coverage.	You are covered through the end of the month in which you terminate; you may continue coverage under COBRA* for 18 months. You are eligible for the first nine months of COBRA at active employee cost.
> Dental coverage.	You are covered through the end of the month in which you terminate; you may continue coverage under COBRA* for 18 months.
> Medical/Dental: For those employees who are eligible for post-retirement medical/dental benefits	Coverage will continue to employee and eligible dependents. Certain employees might be responsible for co-payment of premiums.
<u>Survivor Benefits</u> > Group Life Insurance > Survivor Income Life Insurance > Dependent Life Insurance > AD&D > Occupational Death Benefits > Business Travel Accident	Ends on your termination date. ** Ends on your termination date. ** Ends on your termination date. ** Ends on your termination date. Ends on your termination date. Ends on your last day of work.
<u>Disability Coverage</u> > Illness and Non-Occupational Accident Disability Plan > Long Term Disability	Ends on your termination date. Ends on your termination date.
<u>Dependent Care Account</u>	Your contributions stop when you terminate employment. You may continue to submit claims for dependent care expenses incurred through December 31 only to the extent of your contributions to the account.
<u>Savings Plan</u>	When you terminate employment, you may receive your account balance in a lump sum. Taxable amounts are eligible for IRA rollovers. If your account balance is greater than \$5,000, you may choose to postpone receipt until age 70 1/2. Outstanding loans must be paid in full within 60 days to avoid taxes and penalty.
<u>Pension Plan</u>	Lump sum payments made for values under \$5,000. Optional lump sum payments are made for values between \$5,001 and \$10,000. Lump sum payments are eligible for IRA rollovers. If you have attained age 55 and the "Rule of 75", monthly benefits may commence the month following termination.
* Provided you pay any required contributions ** Conversion privileges may apply. Reduced Group Life Insurance benefits for retirees.	

The Company reserves the right to change or terminate coverage for current and former employees at any time. Any such change may be in the benefits provided, the contributions required, or in any other aspect in accordance with applicable laws.